

DOMESTIC RELATIONS — CHILD SUPPORT — EQUITABLE ESTOPPEL MAY BE APPLIED TO PREVENT STEPPARENT FROM DENYING OBLIGATION TO SUPPORT STEPCHILDREN AFTER DIVORCING NATURAL PARENT — *Miller v. Miller*, 97 N.J. 154, 478 A.2d 351 (1984).

*In her dreary kitchen Cinderella had no thought of litigation, nor of the august courts and legislatures which have toiled sporadically to define the incidents of her status.**

English and American courts have traditionally been reluctant to impose a legal obligation upon stepparents¹ to support their stepchildren.² Instead, courts have consistently held that child support by a stepparent is purely voluntary,³ reflecting the belief that natural parents bear the ultimate burden of child support.⁴ As this area of the law developed, however, exceptions to this hard and fast rule emerged. One exception adopted by many modern courts⁵ involves the creation of an *in loco parentis* relationship when a stepparent accepts a child into his home.⁶ In the proper circumstances,⁷ this *in loco parentis* relationship will impose upon the stepparent a legal

* Note, *Stepchildren and In Loco Parentis Relationships*, 52 HARV. L. REV. 515, 515 (1939).

¹ A stepparent is defined as “[t]he mother or father of a child born during a previous marriage of the other parent and hence, not the natural parent of such child.” BLACK’S LAW DICTIONARY 1268 (5th ed. 1979). The terms “stepparent” and “stepfather” are used interchangeably throughout this note because all of the cases cited deal specifically with stepfathers. Presumably, the same principles of law would apply to stepmothers.

² See *Schneider v. Schneider*, 25 N.J. Misc. 180, 182-83, 52 A.2d 564, 566 (Ch. 1947).

³ See, e.g., *D. v. D.*, 56 N.J. Super. 357, 361, 153 A.2d 332, 334 (App. Div. 1959); *Schneider v. Schneider*, 25 N.J. Misc. 180, 182-83, 52 A.2d 564, 566 (Ch. 1947); *State ex rel. Gilman v. Bacon*, 249 Iowa 1233, 1238, 91 N.W.2d 395, 399 (1958).

⁴ See generally Lewis & Levy, *Family Law and Welfare Policies: The Case for “Dual Systems”*, 54 CALIF. L. REV. 748, 762 (1966) (explaining historical reluctance to transfer parental support obligations from natural parent to stepparent).

⁵ See, e.g., *Clevenger v. Clevenger*, 189 Cal. App. 2d 658, 665-66, 11 Cal. Rptr. 707, 711 (1961); *In re Adoption of Cheney*, 244 Iowa 1180, 1184-85, 59 N.W.2d 685, 687 (1953); *Brummitt v. Commonwealth*, 357 S.W.2d 37, 39 (Ky. Ct. App. 1962).

⁶ See *Schneider v. Schneider*, 25 N.J. Misc. 180, 183, 52 A.2d 564, 566 (Ch. 1947). The *Schneider* court was careful to recognize that this *in loco parentis* “relationship does not exist unless it is self-imposed.” *Id.*

⁷ See *A.S. v. B.S.*, 139 N.J. Super. 366, 369, 354 A.2d 100, 101 (Ch. Div. 1976). The court outlined the factors necessary for an *in loco parentis* relationship: “The essential elements of that status [include] the intent to assume the parental relationship, which clearly is a question of fact rather than law. Furthermore, the relationship exists only so long as the parties thereto, namely the surrogate parent and/or the child, desire that it exist.” *Id.*

duty to support his stepchildren.⁸ The same courts recognize, nevertheless, that the stepparent's duty of support in an *in loco parentis* situation will terminate upon divorce.⁹ Recently, this principle was substantially modified by the New Jersey Supreme Court.¹⁰ In *Miller v. Miller*,¹¹ the supreme court held that in appropriate situations the doctrine of equitable estoppel may be applied to continue the stepparent's support obligations after divorce from the natural parent.¹²

Gladys Miller was initially married to Ralph Febre, with whom she had two children, Michelle and Suzette.¹³ After Gladys and Ralph separated in 1966,¹⁴ Ralph provided support for Gladys and the children until he was sent to prison in 1968.¹⁵ During Ralph's prison term, Gladys and Ralph were divorced.¹⁶

On December 16, 1972, Gladys was remarried to Jay Miller.¹⁷ Michelle and Suzette lived with the couple,¹⁸ and Jay assumed the obligation to support the children.¹⁹ Although Ralph also attempted to provide support for his children,²⁰ Jay objected vehemently.²¹ Ralph once endeavored to send money to the girls, but Jay destroyed the check before they received it.²² Confronted with Jay's

⁸ See *id.* at 369-70, 354 A.2d at 101-02.

⁹ See *id.* at 370, 354 A.2d at 102 (dissolution of familial unit by divorce deemed to terminate stepparent's intent to support child).

¹⁰ *Miller v. Miller*, 97 N.J. 154, 167, 478 A.2d 351, 357-58 (1984).

¹¹ 97 N.J. 154, 478 A.2d 351 (1984).

¹² *Id.* at 167, 478 A.2d at 357-58.

¹³ *Id.* at 159, 478 A.2d at 353.

¹⁴ *Id.* At the time of their natural parents' separation, Michelle was approximately two and one-half years old, and Suzette was approximately six months old. Plaintiff-Respondent's Letter Brief at 1, *Miller v. Miller*, 97 N.J. 154, 478 A.2d 351 (1984) [hereinafter cited as Plaintiff-Respondent's Letter Brief].

¹⁵ *Miller*, 97 N.J. at 160, 478 A.2d at 353-54. Before he went to prison on a drug charge, Ralph gave Gladys \$5,000 to assist in the support of his children. *Id.*, 478 A.2d at 354. Ralph made no further support payments while he was in prison. See *id.*, 478 A.2d at 353-54.

¹⁶ See *id.* at 159-60, 478 A.2d at 353-54. The divorce agreement between Gladys and Ralph contained no provision regarding Ralph's support of the children. *Id.* at 160, 478 A.2d at 353.

¹⁷ *Id.* at 158, 478 A.2d at 353. Preceding their marriage, Gladys, Jay, and Gladys's two daughters lived together for one year. Brief and Appendix for Plaintiff-Respondent-Cross Appellant at 4, *Miller v. Miller*, No. A-2968-81T2 (N.J. Super. Ct. App. Div. June 16, 1983), *rev'd and remanded*, 97 N.J. 154, 478 A.2d 351 (1984) [hereinafter cited as Plaintiff-Respondent's Brief].

¹⁸ *Miller*, 97 N.J. at 158, 478 A.2d at 353.

¹⁹ *Id.* at 160, 478 A.2d at 354. Jay also claimed the children as dependents on his tax return for 1979. *Id.*

²⁰ See *id.*

²¹ See *id.* Jay feared that accepting Ralph's offers of support would associate Gladys and himself to illegal drug activities. *Id.*

²² *Id.* Gladys argued that the check destroying incident evidenced Jay's insis-

persistent opposition, Ralph ultimately stopped trying to support his daughters.²³

During his marriage to Gladys, Jay established a strong, loving relationship with his two stepdaughters.²⁴ Although the girls were aware that Ralph was their natural father, they introduced Jay as their father to their friends.²⁵ Jay even undertook to adopt the girls, but Ralph refused to give his consent.²⁶ Nevertheless, the girls began to use the surname Miller, and their scholastic records were changed to indicate this.²⁷

On December 12, 1979, Gladys and Jay separated, and Jay discontinued his support for the children.²⁸ Shortly thereafter, Gladys filed a complaint for divorce, seeking monetary support from Jay for the two girls.²⁹ Gladys alleged that Jay led the girls to depend on him as their father to their economic and emotional detriment.³⁰ Moreover, she complained that Jay's actions interfered with and terminated the relationship between the girls and Ralph.³¹ Consequently, she asserted that Jay should be equitably estopped from renouncing his obligation to provide child support.³² In his answer, Jay admitted that he temporarily stood *in loco parentis* to the girls, but he contended that any legal and financial relationship ended after

tence on being the sole support of her children and on being their only father. See Plaintiff-Respondent's Letter Brief, *supra* note 14, at 2.

²³ *Miller*, 97 N.J. at 160, 478 A.2d at 354.

²⁴ *Id.* It was uncontested that during the marriage Jay stood *in loco parentis* to the two girls. See Plaintiff-Respondent's Letter Brief, *supra* note 14, at 1-2. The supreme court agreed with the appellate division that Jay "was an affectionate father and took the girls everywhere. He held the girls out as his own children. He even became a Girl Scout Troop leader, so he could be with them. He enjoyed sports with them and they came to love [Jay] as a father." *Miller*, 97 N.J. at 160, 478 A.2d at 354 (quoting *Miller v. Miller*, No. A-2968-81T2, slip op. at 2-3 (N.J. Super. Ct. App. Div. June 16, 1983), *rev'd and remanded*, 97 N.J. 154, 478 A.2d 351 (1984)).

²⁵ See Plaintiff-Respondent's Brief, *supra* note 17, at 32.

²⁶ *Miller*, 97 N.J. at 160, 478 A.2d at 354.

²⁷ *Id.* at 160-61, 478 A.2d at 354. The parties disputed the question of who initiated the name change. *Id.* Gladys testified, however, that Jay would not sign school documents unless the documents indicated that the girls' surname was Miller. See Plaintiff-Respondent's Brief, *supra* note 17, at 23. It should be noted, however, that both girls returned to using the name Febre once Gladys and Jay were divorced. *Miller*, 97 N.J. at 161, 478 A.2d at 354.

²⁸ *Miller*, 97 N.J. at 158, 478 A.2d at 353.

²⁹ *Id.* Gladys also prayed for alimony, equitable distribution, and payment of her counsel fees. Brief and Appendix for Defendant-Appellant at 1, *Miller v. Miller*, No. A-2968-81T2 (N.J. Super. Ct. App. Div. June 16, 1983), *rev'd and remanded*, 97 N.J. 154, 478 A.2d 351 (1984).

³⁰ *Miller*, 97 N.J. at 158-59, 478 A.2d at 353.

³¹ *Id.* at 159, 478 A.2d at 353.

³² *Id.*

his divorce from Gladys.³³

Focusing on the "emotional bonding" that Jay intentionally developed with his stepchildren,³⁴ the trial court held that Jay was equitably estopped from disclaiming his duty to support the children.³⁵ Most salient to the court was the fact that Jay's actions not only led the girls to regard Jay as their "real" father, but also tended to alienate their natural parent, Ralph.³⁶ The appellate division affirmed the trial court's decision, but did not rely on the "emotional bonding" theory.³⁷ Instead, the court found that Jay had interfered with the girls' relationship with their natural father to their financial and emotional detriment.³⁸ Jay appealed the decision to the supreme court, and certification was granted.³⁹

The New Jersey Supreme Court held that the doctrine of equitable estoppel could indeed be used in certain cases to impose a child support obligation on stepparents after they have separated from or divorced the natural parent.⁴⁰ In *Miller*, the supreme court found the facts sufficient to establish a *pendente lite* obligation, but reversed and remanded with instructions that the trial court determine if a permanent support obligation could similarly be imposed.⁴¹

The rights of stepchildren to receive support from their stepparents have evolved slowly through the years.⁴² At common law,

³³ *Id.* See generally *infra* notes 48-50 and accompanying text (discussion of common law rule that the *in loco parentis* relationship terminates upon the divorce of the stepparent and the natural parent).

³⁴ *Miller*, 97 N.J. at 159, 478 A.2d at 353. The trial court used the term "emotional bonding" to describe the psychological relationship between a child and the person he perceives as his parent. *Miller v. Miller*, No. M-13516-79, slip op. at 3 (N.J. Super. Ct. Ch. Div. Feb. 17, 1982) (citing J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (new ed. 1979)), *aff'd*, No. A-2968-81T2 (N.J. Super. Ct. App. Div. June 16, 1983), *rev'd and remanded*, 97 N.J. 154, 478 A.2d 351 (1984).

³⁵ *Miller*, 97 N.J. at 159, 478 A.2d at 353.

³⁶ *Miller v. Miller*, No. M-13516-79, slip op. at 3 (N.J. Super. Ct. Ch. Div. Feb. 17, 1982), *aff'd*, No. A-2968-81T2 (N.J. Super. Ct. App. Div. June 16, 1983), *rev'd and remanded*, 97 N.J. 154, 478 A.2d 351 (1984). The trial court concluded that Jay could not escape his financial obligations arising out of the step relationship "by reason of a biological fact." *Id.* at 3-4.

³⁷ See *Miller*, 97 N.J. at 159, 478 A.2d at 353.

³⁸ *Id.*

³⁹ *Miller v. Miller*, 94 N.J. 614, 468 A.2d 243 (1983).

⁴⁰ *Miller*, 97 N.J. at 159, 170, 478 A.2d at 353, 359.

⁴¹ *Id.*

⁴² See generally Berkowitz, *Legal Incidents of Today's "Step" Relationship: Cinderella Revisited*, 4 FAM. L.Q. 209, 227 (1970) (although there may be a "modern tendency. . . to assimilate the stepchild to the natural child," courts have been unwilling to hold stepparents liable for the support of their stepchildren).

the stepfather had no legal obligation to support children born during his spouse's prior marriage.⁴³ This rule, still in existence today, was based on the premise that a stepfather should not be responsible for another man's child.⁴⁴ Despite the common law rule, a few states, excluding New Jersey,⁴⁵ have enacted legislation imposing upon the stepparent a duty to support his stepchildren.⁴⁶ Absent such a statute, however, voluntary assumption of the parental relationship was the only way to impose a support obligation on the stepparent.⁴⁷ When a person placed himself in the position of a parent and assumed the parental obligations toward the child, that person stood *in loco parentis* to the child.⁴⁸ The *in loco parentis* relationship arose when a stepparent took his spouse's child into his home "under circumstances giving rise to a presumption that he or she [would] assume responsibility to maintain, rear, and educate the child."⁴⁹ This relationship traditionally terminated when the stepparent and the natural parent divorced.⁵⁰

⁴³ *Schneider v. Schneider*, 25 N.J. Misc. 180, 182-83, 52 A.2d 564, 566 (Ch. 1947). At early common law, even the natural parent's duty to support his child was regarded only as a moral obligation and not a legal one. See generally 2 W. BLACKSTONE, COMMENTARIES *447. Blackstone recognized this duty to be a principle of natural law bestowed upon the parent "not only by nature [but also by the parent's] own proper act, in bringing [the child] into the world." *Id.* Blackstone described giving a child life, and then watching the child "perish," as injurious to the child "in the highest manner." *Id.* In contrast, today's statutes mandate the natural parents' maintenance of their children. See, e.g., 1 G. SKOLOFF & L. CUTLER, NEW JERSEY FAMILY LAW PRACTICE § 5.1B (5th ed. 1984) (list of New Jersey statutory sources that provide child support awards).

⁴⁴ *Lewis & Levy*, *supra* note 4, at 762. It has been observed that the stepfather's immunity from support responsibility probably "reflects ancient notions of the sanctity of blood ties and the indissolubility of marriage rather than any contemporary examination of the social values at stake." *Id.*

⁴⁵ *Miller*, 97 N.J. at 162, 478 A.2d at 355.

⁴⁶ See, e.g., HAWAII REV. STAT. § 577-4 (1976); N.Y. JUD. LAW § 415 (McKinney 1983); WASH. REV. CODE ANN. § 26.16.205 (Cum. Supp. 1985). But see *Lewis & Levy*, *supra* note 4, at 762 (suggesting that legislatures will be hesitant to enact stepchildren support statutes and depart from the "emotionally appealing" argument—"the natural father brought the children into the world, let him pay for them").

⁴⁷ *Berkowitz*, *supra* note 42, at 212.

⁴⁸ See *Hails*, *In Loco Parentis and the Relevant Child*, 2 ORANGE COUNTY B.J. 712, 714 (1975). The *in loco parentis* relationship bestows upon the stepparent the same burdens and benefits of natural parenthood. *Id.* See generally *Mahoney*, *Support and Custody Aspects of the Stepparent-Child Relationship*, 70 CORNELL L. REV. 38, 41-43 (1984) (discussion of *in loco parentis* relationship); *Bartlett*, *Rethinking Parenthood As an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879, 913-14 (1984) (same).

⁴⁹ *Miller*, 97 N.J. at 162, 478 A.2d at 355.

⁵⁰ See *Clevenger v. Clevenger*, 189 Cal. App. 2d 658, 665-66, 11 Cal. Rptr. 707, 711 (1961).

In 1947, the New Jersey Court of Chancery delineated the parameters of the *in loco parentis* relationship in *Schneider v. Schneider*.⁵¹ August and Catherine Schneider were married for less than a year.⁵² During that time, Mrs. Schneider's child from a previous marriage lived with them.⁵³ After the couple separated,⁵⁴ Mrs. Schneider refused to return to her husband unless he agreed to permit her child to live with them.⁵⁵ Mr. Schneider then sued Mrs. Schneider for divorce based on desertion.⁵⁶ Mrs. Schneider countered that, because August was a stepfather, he stood *in loco parentis* to the child and therefore had "a legal duty to receive and maintain the child in any marital home."⁵⁷

The *Schneider* court disagreed with Mrs. Schneider and reiterated the common law rule that a stepfather is under no obligation to maintain his wife's child from a previous marriage.⁵⁸ The court held that even if a stepfather voluntarily took a stepchild into his home and assumed an *in loco parentis* relationship to the child, the attaching parental obligations continued only so long as the stepparent *intended* for them to continue.⁵⁹ The *Schneider* court emphasized the temporary nature of this relationship as a factor supporting the stepparent's power to terminate his *in loco parentis* support duties at will.⁶⁰

⁵¹ 25 N.J. Misc. 180, 52 A.2d 564 (Ch. 1947).

⁵² See *id.* at 180, 52 A.2d at 565.

⁵³ *Id.*

⁵⁴ *Id.* at 181, 52 A.2d at 565. The parties had separated once before, but had resumed marital relations. *Id.* Apparently, there was disagreement as to the upbringing of the child and disharmony in the family home caused by Mr. Schneider's refusal to adopt the child. See *id.*

⁵⁵ *Id.* at 182, 52 A.2d at 565. *Schneider* was decided prior to the days of "no fault" divorce, when divorce grounds were limited. See N.J. STAT. ANN. § 2A:34-2 (1952) (divorce grounds limited to adultery, desertion, and extreme cruelty) (amended 1971). If the married parties separated during this era of divorce law, and neither party had committed one of the offenses warranting a divorce, either party had a right to demand resumption of marital relations. See *Schneider*, 25 N.J. Misc. at 181, 52 A.2d at 565. If one spouse refused to terminate the separation, he or she would be deemed a "deserter," supplying the other party with a ground for divorce. See *id.*

⁵⁶ *Schneider*, 25 N.J. Misc. at 180, 52 A.2d at 565. See generally *supra* note 55 (explaining desertion as a traditional ground for divorce).

⁵⁷ *Schneider*, 25 N.J. Misc. at 182, 52 A.2d at 566.

⁵⁸ *Id.* at 182-83, 52 A.2d at 566.

⁵⁹ See *id.* at 183-84, 52 A.2d at 566-67. The *Schneider* court defined the stepparent in an *in loco parentis* position as "a person who means to put himself in the situation of the lawful father of the child, with reference to the father's office and duty of making provision for the child." *Id.* at 183, 52 A.2d at 566 (quoting *Brinkerhoff v. Merselis' Ex'r*, 24 N.J.L. 680, 683 (Sup. Ct. 1855)).

⁶⁰ See *id.* at 184-85, 52 A.2d at 567. More specifically, the *Schneider* court com-

In 1959, the principles espoused in *Schneider* were applied in *D. v. D.*⁶¹ In that case, the court permitted a stepfather to disclaim his *in loco parentis* relationship after fourteen years of providing for the child.⁶² During the marriage of Mr. and Mrs. D., three children were born.⁶³ Mr. D. was not the father of the second child, however.⁶⁴ Nonetheless, that child was supported by Mr. D., used his surname, and was always considered "a part of the family."⁶⁵ When the parties separated, Mrs. D. sought child support for all three children.⁶⁶ The appellate division, following *Schneider*, held that although Mr. D. "long stood *in loco parentis* to the [second] child," he could not be forced to support a child that was not his own.⁶⁷ In reaching its decision, the court, as in *Schneider*, focused upon the temporary character of the *in loco parentis* relationship⁶⁸ and the fact that the stepparent did not intend for this relationship to continue after divorce.⁶⁹

One year after *D. v. D.*, a New Jersey court departed from the general rule that a stepparent's *in loco parentis* relationship automatically terminated with his divorce from the natural parent.⁷⁰ In *Amadeo v. Amadeo*,⁷¹ three children lived with Lorayne and Paul Amadeo during their marriage; two children were their own and one child was Mrs. Amadeo's by a prior marriage.⁷² When Mr. and Mrs.

pared the temporary support obligations of an *in loco parentis* relationship with the permanent support obligations of adoption:

Assuming that the [*in loco parentis*] relationship once existed in this case, it has not continued to exist and it may not again exist without the husband meaning that it shall exist. "*Loco parentis* has to do with custody, liability to support, and the like, and is temporary in character, and is not to be likened to that of adoption. The one is temporary in character, the other permanent and abiding."

Id. (citation omitted).

⁶¹ 56 N.J. Super. 357, 153 A.2d 332 (App. Div. 1959).

⁶² See *id.* at 359, 361-62, 153 A.2d at 333, 334.

⁶³ *Id.* at 359, 153 A.2d at 333.

⁶⁴ *Id.* Mr. D. was fully aware of the parentage of the second child, but still chose to resume marital relations with his wife. *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*, 153 A.2d at 332.

⁶⁷ *Id.* at 361-62, 153 A.2d at 334. Although the court permitted Mr. D. to disclaim a support obligation, no evidence was produced at the trial to prove that Mr. D. terminated his *in loco parentis* relationship with the second child. See *id.* at 359, 153 A.2d at 333.

⁶⁸ *Id.* at 361-62, 153 A.2d at 334; see also *supra* note 60.

⁶⁹ See *D. v. D.*, 56 N.J. Super. at 361, 153 A.2d at 334; see also *supra* note 59.

⁷⁰ See *Amadeo v. Amadeo*, 64 N.J. Super. 417, 425-26, 166 A.2d 397, 401 (App. Div. 1960).

⁷¹ 64 N.J. Super. 417, 166 A.2d 397 (App. Div. 1960).

⁷² *Id.* at 420, 166 A.2d at 398.

Amadeo separated, the husband voluntarily continued to support all three children.⁷³ After one year, Mr. Amadeo reduced the amount of these payments, causing Mrs. Amadeo to sue for continued support.⁷⁴ Although she sued only for the maintenance of the two children born of the marriage,⁷⁵ the trial court awarded Mrs. Amadeo essentially the same amount of support that the husband had been voluntarily contributing to her and the three children.⁷⁶ In appealing the support order, Mr. Amadeo relied on *D. v. D.* and argued that he was not required to provide support for his stepchild.⁷⁷ The appellate division rejected his argument and held that Mr. Amadeo was responsible for supporting the stepchild because he remained *in loco parentis* to the child after separating from Mrs. Amadeo.⁷⁸ Furthermore, the court stated that Mr. Amadeo would continue to remain *in loco parentis* to his stepchild until he affirmatively disclaimed the relationship.⁷⁹

In 1973, a county trial court became the first court in New Jersey to rely upon the theory of equitable estoppel⁸⁰ in order to

⁷³ See *id.* Mr. Amadeo also took care of all the large household expenses, such as the mortgage payments, taxes, insurance, and utility charges. *Id.*

⁷⁴ See *id.* at 419-20, 166 A.2d at 398.

⁷⁵ *Id.*

⁷⁶ See *id.* at 420-21, 166 A.2d at 399. The court also awarded Mrs. Amadeo custody of all three children and continued occupancy in the marital home owned by Mr. Amadeo. *Id.* at 421, 166 A.2d at 399. Mr. Amadeo was awarded weekly visitation rights and was ordered to continue paying the large household expenses on the marital home. *Id.*

⁷⁷ *Id.* at 425, 166 A.2d at 401.

⁷⁸ See *id.* The facts that Mr. Amadeo never excluded the stepchild from visitation negotiations and that he claimed the stepchild as an income tax deduction convinced the court that Mr. Amadeo intended to stand *in loco parentis* to his stepchild. *Id.* The appellate court reversed and remanded the matter to the trial court, however, to determine the financial status of the parties. See *id.* at 424, 166 A.2d at 401.

⁷⁹ *Id.* at 425, 166 A.2d at 401.

⁸⁰ Equitable estoppel prevents a party's disavowal of "acts done or positions taken or assumed by him when there has been reliance thereon and prejudice would result to the other party." *Ross v. Ross*, 126 N.J. Super. 394, 398, 314 A.2d 623, 625 (Essex County Ct. 1973) (quoting *Goodpasture v. Goodpasture*, 115 N.J. Super. 189, 197, 278 A.2d 531, 535 (Ch. Div. 1971)), *aff'd*, 135 N.J. Super. 35, 342 A.2d 566 (App. Div. 1975).

The essential elements of equitable estoppel are as follows: (1) first party conduct that amounts to a false representation; (2) knowledge by the first party that his representation was untrue; (3) expectation or intention by the first party that his conduct will be acted upon; (4) ignorance of the truth by the second party asserting equitable estoppel; (5) reliance by the second party upon the first party's conduct; and (6) change of position for the worse by the second party. See *Clark v. Judge*, 84 N.J. Super. 35, 54, 200 A.2d 801, 812 (Ch. Div. 1964), *aff'd*, 44 N.J. 550, 210 A.2d 415 (1965); *Feldman v. Urban Commercial, Inc.*, 70 N.J. Super. 463, 474-75, 175 A.2d 683, 688-89 (Ch. Div. 1961); *Lawes v. Lynch*, 7 N.J. Super. 584, 593, 72 A.2d 414, 419 (Ch. Div.), *aff'd*, 6 N.J. 1, 76 A.2d 885 (1950).

impose a continuing support obligation on a stepparent.⁸¹ In *Ross v. Ross*,⁸² David Ross married Beverly Ross eighteen months after the birth of her illegitimate child.⁸³ During the marriage, the husband claimed natural parentage by filing a certificate admitting paternity with the New Jersey Bureau of Vital Statistics.⁸⁴ The child grew up believing that David Ross was his father.⁸⁵ Nevertheless, when the parties separated and Beverly Ross sought child support, the stepfather denied that he was the natural father and argued that he could not be forced to support a child that was not his own.⁸⁶ Although Mrs. Ross also admitted that her husband was not the child's natural

⁸¹ See *Ross v. Ross*, 126 N.J. Super. 394, 314 A.2d 623 (Essex County Ct. 1973), *aff'd*, 135 N.J. Super. 35, 342 A.2d 566 (App. Div. 1975).

⁸² 126 N.J. Super. 394, 314 A.2d 623 (Essex County Ct. 1973), *aff'd*, 135 N.J. Super. 35, 342 A.2d 566 (App. Div. 1975).

⁸³ *Id.* at 395, 314 A.2d at 624.

⁸⁴ *Id.* at 396, 314 A.2d at 624. A New Jersey statute provides that proof of the subsequent marriage of an illegitimate child's natural parents coupled with a request by both natural parents enables the State registrar to amend the child's birth certificate to reflect the father's surname. N.J. STAT. ANN. § 26:8-40 (West Cum. Supp. 1984-1985).

⁸⁵ See *Ross*, 126 N.J. Super. at 396-97, 314 A.2d at 624-25.

⁸⁶ *Id.* at 397, 314 A.2d at 625. The stepfather argued that even if he previously admitted paternity under N.J. STAT. ANN. § 26:8-40, he should not be estopped to later deny his parenthood. See *Ross*, 126 N.J. Super. at 397, 314 A.2d at 625. In support of this argument, the stepfather relied on *Jackson v. Prudential Ins. Co. of Am.*, 106 N.J. Super. 61, 254 A.2d 141 (Law Div. 1969). *Ross*, 126 N.J. Super. at 397, 314 A.2d at 625. In *Jackson*, a child was conceived and born during the marriage of his mother and stepparent, but it was clear that the stepparent was not the father because he had no access to his wife at the time she became pregnant. See *Jackson*, 106 N.J. Super. at 75-76, 254 A.2d at 149. The stepparent was killed, and the subsequent litigation addressed the issue of who was entitled to insurance proceeds. *Id.* at 64-65, 254 A.2d at 142-43. The stepchild contended that he was the decedent's son and was therefore legally entitled to the proceeds as the decedent's next of kin. *Id.* at 75, 254 A.2d at 148. The court held that the child was not entitled to the insurance proceeds and would not even entertain the argument that "acquiescence to parenthood by married adults bars and estops a later denial of parenthood." *Id.* at 77-78, 254 A.2d at 150. The *Ross* court found, however, that the *Jackson* decision was "totally devoid of precedential value" because the equitable estoppel issue was left open. *Ross*, 126 N.J. Super. at 399-400, 314 A.2d at 626. The *Ross* court therefore held the stepparent responsible for child support. *Id.* at 400, 314 A.2d at 626.

The *Ross* court found more persuasive the decision in *Bartholdi v. Dumbeky*, 37 N.J. Super. 418, 117 A.2d 518 (App. Div. 1955). See *Ross*, 126 N.J. Super. at 399-400, 314 A.2d at 626. *Bartholdi* concerned the application of New Jersey's intestate laws to illegitimate children. See *Bartholdi*, 37 N.J. Super. at 424, 117 A.2d at 521. In *Bartholdi*, the decedent's husband challenged the maternity of the decedent's illegitimate child. *Id.* at 422, 117 A.2d at 520. Because the decedent's husband had previously entered into settlement agreements with the child conceding the child's maternity and illegitimacy, the court barred the husband from subsequently disputing the child's status. *Id.* at 424, 117 A.2d at 521.

father,⁸⁷ the court found that both David and Beverly Ross were estopped from denying Mr. Ross's paternity.⁸⁸ The court opined that equitable estoppel was an appropriate remedy because David Ross represented himself as the child's natural father, and the child sincerely believed that David Ross was his father.⁸⁹ The court reasoned that the child was the "real party in interest," and if parentage was denied, the child would be "irretrievably injured."⁹⁰

Less than three years after the *Ross* decision, another New Jersey court used the equitable estoppel doctrine to prevent a step-parent from disclaiming his child support obligations.⁹¹ In *A.S. v. B.S.*,⁹² the natural parents gave their child to Mr. and Mrs. S. approximately one month after his birth.⁹³ Mr. and Mrs. S. raised the child as part of their own family for almost nine years, and the child had absolutely no contact with his natural parents.⁹⁴ After Mr. and Mrs. S. were divorced, the chancery division ordered Mr. S. to pay child support.⁹⁵ Mr. S. subsequently filed for relief from that order.⁹⁶ Relying on *D. v. D.* and *Amadeo*, he argued that his support obligation terminated because he no longer intended for the *in loco parentis* relationship to exist.⁹⁷

⁸⁷ *Ross*, 126 N.J. Super. at 396, 314 A.2d at 624.

⁸⁸ *Id.* at 400, 314 A.2d at 626.

⁸⁹ *Id.*

⁹⁰ *Id.* The court stated:

Bastardizing the child. . . may permanently wound him emotionally. . . Every child has the need to feel rooted. . . When such knowledge is denied the child may resort to fantasy to fill the void. As the links to his past disappear with time, the search for his identity will become more difficult. The anxiety to learn what was in his past may be pathological, making it more difficult for the child to lead a useful life and to form meaningful relationships.

Id. (quoting *In re Adoption by K.*, 92 N.J. Super. 204, 208, 222 A.2d 552, 554 (Bergen County Ct. 1966)).

⁹¹ See *A.S. v. B.S.*, 139 N.J. Super. 366, 372, 354 A.2d 100, 103 (Ch. Div. 1976), *aff'd*, 150 N.J. Super. 122, 374 A.2d 1259 (App. Div. 1977).

⁹² 139 N.J. Super. 366, 354 A.2d 100 (Ch. Div. 1976), *aff'd*, 150 N.J. Super. 122, 374 A.2d 1259 (App. Div. 1977).

⁹³ *Id.* at 368, 354 A.2d at 101. The natural parents delivered to Mr. and Mrs. S. a document entitled "Power of Attorney—Consent to Guardian and Consent to Custody," which gave them "exclusive guardianship" over the child. *Id.* Mr. and Mrs. S. stipulated that they read this "Power of Attorney." *Id.* at 369, 354 A.2d at 101. The court found that this "Power of Attorney" was sufficient to demonstrate that the natural parents intended Mr. and Mrs. S. to raise their child and that Mr. and Mrs. S. accepted that responsibility. *Id.* at 372, 354 A.2d at 103.

⁹⁴ See *id.* at 369, 354 A.2d at 101. The child used the surname of Mr. and Mrs. S., and they were his only source of support. *Id.*

⁹⁵ *Id.* at 368-69, 354 A.2d at 101.

⁹⁶ *Id.* at 369, 354 A.2d at 101.

⁹⁷ See *id.* at 370, 354 A.2d at 102.

The *A.S. v. B.S.* court recognized that prior case law supported the contention that absent intent, an *in loco parentis* relationship ceased to exist.⁹⁸ The court determined, however, that it was necessary to consider the doctrine of equitable estoppel before it could terminate the support order.⁹⁹ Unlike the typical "stepfather" case, neither A.S. nor B.S. was the child's natural parent.¹⁰⁰ The natural parents had abandoned him completely.¹⁰¹ The child was held out to the world as the son of Mr. and Mrs. S.¹⁰² Influenced by the holding in *Ross*, the *A.S. v. B.S.* court estopped Mr. S. from escaping his support duties.¹⁰³ The court emphasized that the child relied on Mr. and Mrs. S. to provide for him, and he would suffer "irreparable harm" if Mr. S. were permitted to repudiate the duties of a natural father.¹⁰⁴ The court reasoned that equitable estoppel was an appropriate remedy to prevent the elimination of the child's heritage.¹⁰⁵

It was against this background of development and change in New Jersey's stepchild support laws that the *Miller* litigation arose. In *Miller*, the New Jersey Supreme Court endorsed the rationales of the *Ross*¹⁰⁶ and *A.S. v. B.S.*¹⁰⁷ decisions in a factual situation similar

⁹⁸ *Id.*

⁹⁹ *Id.* at 371, 354 A.2d at 102.

¹⁰⁰ *See id.* at 370-71, 354 A.2d at 102.

¹⁰¹ *See id.* at 368, 354 A.2d at 101.

¹⁰² *Id.* at 371, 354 A.2d at 102.

¹⁰³ *See id.* at 371-72, 354 A.2d at 102-03.

¹⁰⁴ *Id.* at 371, 354 A.2d at 102-03.

¹⁰⁵ *See id.* at 371-72, 354 A.2d at 102-03.

¹⁰⁶ *See Miller*, 97 N.J. at 163-65, 478 A.2d at 355-57. Justice Garibaldi noted that in cases like *Ross*, the typical circumstances involved a man who "marries a woman who is either pregnant by another man or has recently given birth to another man's child." *Id.* at 165, 478 A.2d at 357. Thereafter, the husband assumes the role of natural parent and represents himself as such to the child and to the public. *Id.* Justice Garibaldi stated that equitable estoppel was an appropriate remedy in these situations because it is highly immoral to permit a "parent" to bastardize a child, long after the parent has treated the child as his own, merely to avoid paying child support. *Id.* (citing *Clevenger v. Clevenger*, 189 Cal. App. 2d 658, 664, 11 Cal. Rptr. 707, 710 (1961)). In New Jersey, when a man marries a woman who is pregnant there is a rebuttable presumption that the child is the legitimate offspring of the parties. *See In re Adoption by K.*, 92 N.J. Super. 204, 206, 222 A.2d 552, 553 (Bergen County Ct. 1966); *cf. Hall v. Rosen*, 50 Ohio St. 2d 135, 136-37, 363 N.E. 2d 725, 726 (1977) (the legitimacy presumption is conclusive in Ohio).

¹⁰⁷ *Miller*, 97 N.J. at 164-66, 478 A.2d at 356-57. The court reasoned that where neither natural parent is available to care for the child, the use of equitable estoppel is fitting because the child has relied on the stepparent's support to the exclusion of other potential providers. *Id.* at 166, 478 A.2d at 357; *see also In re Marriage of Valle*, 53 Cal. App. 3d 837, 126 Cal. Rptr. 38 (1975) (stepparent estopped to deny paternity and duty to pay child support of children he brought from Mexico to the United States and treated as his own); *Wener v. Wener*, 35 A.D. 2d 50, 312 N.Y.S. 2d 815 (1970) (stepparent who brought child into his home with the intention of adopting the child estopped to deny child support obligation).

to those cases.¹⁰⁸ Moreover, the court extended the equitable estoppel theory to permit the imposition of a support duty upon a stepparent even though both natural parents are potentially available to provide child support and the stepchildren do not believe the stepparent is their actual parent.¹⁰⁹

Writing for the *Miller* majority,¹¹⁰ Justice Garibaldi set forth

¹⁰⁸ See *Miller*, 97 N.J. at 163-64, 478 A.2d at 356. Instrumental to the *Miller* court's acceptance of *A.S. v. B.S.* and *Ross* was the reasoning first espoused in the landmark case of *Clevenger v. Clevenger*, 189 Cal. App. 2d 658, 11 Cal. Rptr. 707 (1961). The *Clevenger* court emphasized the strong public policy against allowing parents to illegitimize children they have previously treated as their own:

There is an innate immorality in the conduct of an adult who for over a decade accepts and proclaims a child as his own, but then, in order to be relieved of the child's support, announces, and relies upon his bastardy. This is a cruel weapon, which works a lasting injury to the child and can bring in its aftermath social harm. The weapon should garner no profit to the wielder; the putative father should earn no premium by the assertion of the illegitimacy of the child. If any legal hypothesis can prevent such an inducement to publication of illegitimacy, we should adopt that theory.

Id. at 664, 11 Cal. Rptr. at 710.

Clevenger was the first case in this country to adapt equitable estoppel principles to a stepchild support action. See *id.* at 672, 11 Cal. Rptr. at 715. In *Clevenger*, the stepchild was born and conceived during the marriage of the husband and wife, but the husband was not the natural father. *Id.* at 663, 11 Cal. Rptr. at 709. The stepchild used the husband's surname, however, and was accepted into the family and treated as a legitimate child by the husband. *Id.* at 664, 11 Cal. Rptr. at 709-10. The trial court, in response to the wife's complaint for divorce, ordered the husband to pay child support. *Id.* at 664, 11 Cal. Rptr. at 710. The appellate court reversed due to insufficient evidence. See *id.* at 676, 11 Cal. Rptr. at 717-18. Nonetheless, it laid the foundation for recovery based upon the doctrine of equitable estoppel. See *id.* The *Clevenger* court found that the following elements were required for the application of equitable estoppel: a representation by the husband to the child that he was the child's natural father; the husband's intention that the child accept and act upon the representation; reliance by the child upon the representation; and ignorance by the child of the fact that the husband was not the natural father. *Id.* at 671, 11 Cal. Rptr. at 714. These factors, the court opined, benefit the husband by bestowing upon him the child's love and affection, a right to the earnings of the child, and the "prestige and fulfillment" that is derived from "the community's recognition of the husband as a father." *Id.* Conversely, these factors cause the child to suffer a detriment because the child is deprived of the natural father's support, is induced to rely on the stepparent for maintenance and emotional support, and is inflicted with "emotional trauma" as a result of publication of his illegitimacy. *Id.* In order to reduce the chances of stepchildren suffering these injuries, the *Clevenger* court applied the doctrine of equitable estoppel to cases where the husband represents to the child that he is his natural father and the child believes the husband is the natural father. *Id.* at 674, 11 Cal. Rptr. at 716.

¹⁰⁹ See *Miller*, 97 N.J. at 167-68, 478 A.2d at 358.

¹¹⁰ Chief Justice Wilentz and Justices Schreiber, Pollock, and O'Hern joined in Justice Garibaldi's opinion. *Id.* at 178, 478 A.2d at 363. Justice Handler wrote a separate opinion, concurring in part and dissenting in part, in which Justice Clifford joined. *Id.*

guidelines for imposing both temporary and permanent support obligations on stepparents.¹¹¹ The court refused to require the custodial parent to prove the difficult elements of equitable estoppel in order to obtain a temporary support award.¹¹² The majority reasoned that stepchildren who had been primarily supported by the stepparent clearly needed support for the time between the parents' separation and a final adjudication of the support issue.¹¹³ The court therefore held that the custodial parent should be awarded *pendente lite* child support¹¹⁴ if "the natural parent demonstrates that he or she is not receiving support for the children from their other natural parent and establishes by affidavit that the stepparent's conduct actively interfered with the children's support by their natural parent."¹¹⁵

The *Miller* court next defined a more stringent test for imposing a permanent support obligation on a stepparent.¹¹⁶ The court

¹¹¹ *Id.* at 167, 478 A.2d at 357-58. Although not pleaded in *Miller*, Justice Garibaldi acknowledged implied or express contract as an alternate equitable theory for imposing a permanent support obligation on a stepparent. *Id.* at 166-67, 478 A.2d at 357. The implied or express contract theory precludes a stepparent from renouncing his stepchild support obligations if an express or implied child support contract with the natural parent serves as part of the marital consideration. *Id.* at 166, 478 A.2d at 357. The typical fact pattern involves a husband who is aware of his wife's pregnancy by another man when he marries her. See *L. v. L.*, 497 S.W.2d 840 (Mo. Ct. App. 1973); *T. v. T.*, 216 Va. 867, 224 S.E.2d 148 (1976). Generally, the rule is that the husband will "not assume a continuing and irrevocable obligation to support" his wife's illegitimate child. *L. v. L.*, 497 S.W. 2d at 841. If the husband voluntarily assumes a parental position to the child, he will, of course, stand *in loco parentis*. See *supra* notes 47-50 and accompanying text. Upon the divorce of his wife, however, the husband's *in loco parentis* relationship will terminate along with any support obligations. *L. v. L.*, 497 S.W. 2d at 841. On the other hand, if the circumstances demonstrate that the husband promised before the marriage to "recognize the child and treat it as his own," some courts will find a binding and valid contract. See, e.g., *L. v. L.*, 497 S.W. 2d at 842; *T. v. T.*, 216 Va. 871, 224 S.E.2d at 151. The requisite consideration is the wife's agreement to marry the husband in return for the husband's promise to maintain the child. *L. v. L.*, 497 S.W. 2d at 842. The resulting "contract" is then declared valid and binds the husband to support the child permanently. See *L. v. L.*, 497 S.W. 2d at 842; *T. v. T.*, 216 Va. at 873, 224 S.E. 2d at 152.

¹¹² See *Miller*, 97 N.J. at 167, 478 A.2d at 358.

¹¹³ *Id.*

¹¹⁴ The statutory source that allows *pendente lite* support to be awarded is N.J. STAT. ANN. § 2A:34-23 (West Cum. Supp. 1984-1985). It provides in part: "Pending any matrimonial action brought in this State. . .the court may make such order. . .as to the care, custody, education and maintenance of the children. . .as the circumstances of the parties and the nature of the case shall render fit, reasonable and just. . . ." *Id.* See generally 1 G. SKOLOFF & L. CUTLER, NEW JERSEY FAMILY LAW PRACTICE § 5.5A (5th ed. 1984) (general discussion of *pendente lite* awards for spouses and children).

¹¹⁵ *Miller*, 97 N.J. at 167, 478 A.2d at 358.

¹¹⁶ See *id.* at 167-69, 478 A.2d at 358-59.

placed upon the custodial parent the burden of proving representation, reliance, and detriment—the elements of equitable estoppel—as a prerequisite to an order for permanent support.¹¹⁷ In order to meet the first element, the parent seeking support must demonstrate that the stepparent made a representation of support to either the custodial parent or the children.¹¹⁸ The court found it unnecessary for the stepparent to make a representation to the children that he is their natural parent.¹¹⁹ In so doing, the *Miller* court departed from the decisions of other courts requiring that the children believe “the stepparent is their natural parent.”¹²⁰

The supreme court then addressed the second element of equitable estoppel by focusing on the types of reliance that are insufficient to invoke the remedy.¹²¹ The *Miller* court found that emotional reliance alone—for example, the “emotional bonding” theory enunciated by the trial court¹²²—was inadequate.¹²³ The majority reasoned that to decide differently would create public policy problems by both punishing stepparents who developed loving family relationships and rewarding stepparents who ignored their stepchildren.¹²⁴

The court determined that the third element, detriment, would be satisfied only if “representation[s] or conduct” by the stepparent led to a termination of support by the natural parent.¹²⁵ If such a situation was shown to carry future financial detriment for the

¹¹⁷ *Id.* at 167, 478 A.2d at 358. See also *supra* note 80 (discussion of elements of equitable estoppel).

¹¹⁸ *Miller*, 97 N.J. at 168, 478 A.2d at 358.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 167, 478 A.2d at 358. But see, e.g., *Clevenger v. Clevenger*, 189 Cal. App. 2d 658, 674, 11 Cal. Rptr. 707, 716 (1961) (restricting applicability of equitable estoppel to cases in which the children believe that the stepfather is their natural father).

¹²¹ *Miller*, 97 N.J. at 168, 478 A.2d at 358.

¹²² See generally notes 34-39 and accompanying text.

¹²³ *Miller*, 97 N.J. at 168, 478 A.2d at 358. The *Miller* majority declined to set precedent and be the first court to use equitable estoppel “to force a husband to support the children of his divorced spouse merely because he developed a close relationship with the children.” *Id.* Justice Handler, however, argued that “emotional bonding” is a factor to consider when determining a stepparent’s support obligations. *Id.* at 175, 478 A.2d at 362 (Handler, J., concurring in part and dissenting in part).

¹²⁴ *Id.* at 168, 478 A.2d at 358.

¹²⁵ *Id.* at 168-69, 478 A.2d at 358. In contrast, Justice Handler noted an additional detriment to the stepchildren—locating an “unavailable or uncooperative or unamenable to legal process” natural parent in order to enforce his support duty. *Id.* at 177, 478 A.2d at 363 (Handler, J., concurring in part and dissenting in part). Justice Handler reasoned that the natural parent’s absence was “assuredly a probable consequence” resulting from the stepparent’s hostile conduct. *Id.* Thus, Jus-

stepchild, the stepparent might be responsible for support payments under the equitable estoppel doctrine.¹²⁶ Rather than design an economic detriment test, however, the court, recognizing the uniqueness of familial relationships, left the issue to the discretion of the trial courts.¹²⁷

To illustrate the flexibility of the equitable estoppel doctrine, the supreme court presented two distinct examples of its usage predicated on the availability of the natural parent.¹²⁸ The court maintained that if the natural parent is unavailable, the custodial parent has only to demonstrate that this unavailability is a direct result of the stepparent's conduct.¹²⁹ The trial court could then equitably estop the stepparent from disclaiming his support obligation.¹³⁰ If the natural parent's whereabouts are known, however, the *Miller* court held that the custodial parent has the burden of producing the natural parent in court and first seeking child support from him.¹³¹ The burden then shifts to the natural parent to prove why he should not have to support his children.¹³² The court stated that the natural parent's burden would be met if he could demonstrate that he relied on the stepparent's exclusive support of the children and that he is currently unable to support the children.¹³³ Only then would the *Miller* court permit an order for child support to be issued against the stepparent.¹³⁴ The *Miller* court opined, however, that even if the stepparent is ordered to support the children, this obligation is subject to modification pending any change in the natural parent's ability to provide support.¹³⁵

The New Jersey Supreme Court stressed that in stepchild support cases the equitable estoppel doctrine should be used cautiously.¹³⁶ Because "society and its current laws" expect the natural

tice Handler believed that the burden of proof should be on the stepparent to demonstrate otherwise. *Id.*

¹²⁶ *Id.* at 168-69, 478 A.2d at 358.

¹²⁷ *See id.*, 478 A.2d at 358-59.

¹²⁸ *Id.* at 169, 478 A.2d at 359.

¹²⁹ *Id.* In order for the natural parent to be deemed "absent" for purposes of invoking the test, the custodial parent must show that he "(1) does not know the whereabouts of the natural parent; (2) cannot locate the other natural parent; or (3) cannot secure jurisdiction over the natural parent for valid legal reasons." *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* The *Miller* court reasoned that "changed circumstances should be reflected in changed obligations regardless of earlier commitments." *Id.*

¹³⁶ *Id.* at 167, 170, 478 A.2d at 357-58, 359.

parent to support his own child, the court observed that the natural parent should always be looked to first for child support.¹³⁷ The majority emphasized that a stepparent could not be forced to support stepchildren permanently unless he *actively interferes* with the natural parent's duty to support.¹³⁸ In *Miller*, the supreme court determined that Gladys Miller had satisfied its *pendente lite* test and was entitled to temporary child support from Jay Miller.¹³⁹ The supreme court found, however, that the *Miller* facts were inadequate to meet the equitable estoppel test it promulgated for a permanent support award.¹⁴⁰ The supreme court reversed the appellate court's decision and remanded the case to the trial court to decide whether the Miller stepchildren incurred a future financial detriment because of their economic reliance on Jay Miller.¹⁴¹ Furthermore, the supreme court held that the trial court, in order to make a finding that the Miller stepchildren did indeed suffer such a detriment, must determine that Jay Miller's actions interfered with the natural parent's duty to support.¹⁴²

Justice Handler, in a concurring and dissenting opinion, agreed

¹³⁷ *Id.* at 169, 478 A.2d at 359.

¹³⁸ *Id.* at 170, 478 A.2d at 359. Justice Garibaldi recognized that collection of child support from divorced "spouses is a persistent problem throughout this country." *Id.* (citation omitted). She accentuated, however, that if the natural parent fails to support his children due to no fault of the stepparent, the stepparent will not automatically be obligated to provide permanent support for his stepchildren. *Id.* Moreover, Justice Garibaldi suggested that the stepparent, if he has contributed any temporary or permanent support, may be able to maintain a suit against the natural parent for reimbursement. *Id.* But see Note, *The Stepparent's Liability for and Right of Reimbursement Against the Natural Father for Necessaries Furnished the Child*, 22 BAYLOR L. REV. 580, 587 (1970) (stepparent's reimbursement for necessities furnished to stepchild is a difficult achievement).

¹³⁹ *Miller*, 97 N.J. at 170, 478 A.2d at 359.

¹⁴⁰ *Id.* Justice Handler disagreed with the majority, however, because he believed the established facts already warranted an imposition of the equitable estoppel doctrine. *Id.* at 173, 478 A.2d at 361 (Handler, J., concurring in part and dissenting in part). Justice Handler found salient the facts that the Miller stepchildren considered the stepparent to be their father, called the stepparent "daddy," and used the stepparent's surname. *Id.* at 175, 478 A.2d at 362 (Handler, J., concurring in part and dissenting in part). Justice Handler argued that these factors evidenced that the stepparent "succeeded in driving a deep wedge between his stepchildren and their natural father." *Id.* Further, Justice Handler focused on the stepparent's "pronounced and purposeful course of conduct," which resulted in the stepchildren's reliance on their stepfather "as their sole source of paternal sustenance and support." *Id.* at 173, 478 A.2d at 361 (Handler, J., concurring in part and dissenting in part).

¹⁴¹ See *id.* at 170, 478 A.2d at 359.

¹⁴² *Id.* The *Miller* court also reversed the appellate court's award of the marital home to Gladys and remanded the issue to the trial court for a review of the "financial arrangements between the parties." *Id.* at 171, 478 A.2d at 359-60.

with the majority that equitable estoppel may be an appropriate remedy to determine the financial interests of stepparents in a matrimonial dispute.¹⁴³ Justice Handler urged, however, that the equitable estoppel theory be broadened in this context because a stepchild's best interests are served by the doctrine.¹⁴⁴ He believed that temporary and permanent support actions should be treated uniformly.¹⁴⁵ The simple prerequisite for establishing an equitable estoppel, Justice Handler argued, should be a support representation by the stepparent that results in the children's detrimental reliance on that stepparent to the exclusion of support from the natural parent.¹⁴⁶ Justice Handler reasoned that the "critical focus" is whether the stepparent "affirmatively encourage[s], and actually succeed[s] in attaining, the family's financial dependence upon him and, further, whether [the stepparent] deliberately and aggressively cut[s] off the support that the children had been receiving or might have received from their natural father."¹⁴⁷ Departing from the majority's holding, he believed that the *Miller* facts clearly supported a finding of permanent support based upon the equitable estoppel theory.¹⁴⁸

Justice Handler also examined the public policy consequences of imposing continuing child support obligations on stepparents.¹⁴⁹ He argued that loving relationships in "step" families would not be discouraged if equitable estoppel was limited to situations in which the stepparent "aggressively" alienates his stepchildren from their natural parent and "vigorously" discourages the natural parent from supporting his children.¹⁵⁰ Justice Handler believed that applying equitable estoppel under those circumstances would deter stepparents from alienating their stepchildren from the natural

¹⁴³ *Id.* at 171, 478 A.2d at 360 (Handler, J., concurring in part and dissenting in part).

¹⁴⁴ *See id.* at 172, 478 A.2d at 360 (Handler, J., concurring in part and dissenting in part).

¹⁴⁵ *Id.* at 176, 478 A.2d at 363 (Handler, J., concurring in part and dissenting in part).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 174, 478 A.2d at 361-62 (Handler, J., concurring in part and dissenting in part).

¹⁴⁸ *Id.* at 173, 478 A.2d at 361 (Handler, J., concurring in part and dissenting in part).

¹⁴⁹ *See id.* at 175-76, 478 A.2d at 362 (Handler, J., concurring in part and dissenting in part).

¹⁵⁰ *Id.* at 176, 478 A.2d at 362 (Handler, J., concurring in part and dissenting in part).

parent.¹⁵¹

Justice Handler concluded his opinion by stating that although a stepparent may be held responsible for the children's support, the natural parent's duty does not dissipate.¹⁵² In addition, Justice Handler urged that both litigants be given the opportunity to enforce the natural parent's duty to support.¹⁵³ He admonished, however, that if the natural parent cannot be located, the stepparent should be equitably estopped "from passing the buck—literally."¹⁵⁴

The New Jersey Supreme Court, through its decision in *Miller*, has taken an important step forward in defining the rights of stepchildren. In an area of law where trial courts historically have been slow to act,¹⁵⁵ the *Miller* court commendably recognized that stepchildren have needs that deserve the full protection of the law.¹⁵⁶ Under traditional common law principles, a stepparent might actively alienate a stepchild from its natural father and then successfully disclaim his duty to support the stepchild upon later divorce from the child's mother.¹⁵⁷ This is no longer the case in New Jersey. It is now clear that a stepparent cannot cause the termination of support by the natural parent and then cut off his own support for the child.¹⁵⁸ With its ruling in *Miller*, the state supreme court properly recognized that the best interest of the stepchild must always be served.¹⁵⁹

The *Miller* court noted the different purposes behind temporary and permanent child support, and the majority proposed different

¹⁵¹ *Id.*, 478 A.2d at 362-63 (Handler, J., concurring in part and dissenting in part).

¹⁵² *Id.* at 177-78, 478 A.2d at 363 (Handler, J., concurring in part and dissenting in part).

¹⁵³ *Id.* at 178, 478 A.2d at 363 (Handler, J., concurring in part and dissenting in part).

¹⁵⁴ *Id.*

¹⁵⁵ See generally Mahoney, *supra* note 48, at 40 (noting failure of legislatures and courts to protect adequately the rights of stepchildren).

¹⁵⁶ See *Miller*, 97 N.J. at 159, 478 A.2d at 353 (concluding that "in appropriate cases a *pendente lite* and permanent support obligation may be imposed on a stepparent on the basis of equitable estoppel").

¹⁵⁷ See *Schneider*, 25 N.J. Misc. at 182-83, 52 A.2d at 566. Common law dictated that any support which the stepparent afforded his stepchild was provided wholly at the will of the stepparent. *Id.* at 183, 52 A.2d at 566. The *Schneider* court stated that "[a] stepfather, as such, is under no obligation by the English common law, to maintain a child of his wife by a former marriage. . . . Other state decisions on the subject. . . show that the American common law is to the same effect." *Id.* at 182-83, 52 A.2d at 566 (citations omitted).

¹⁵⁸ See *Miller*, 97 N.J. at 169, 478 A.2d at 359.

¹⁵⁹ The "best interest of the child" is the typical standard adopted by courts for custody and support issues with respect to *natural* children. See Hails, *supra* note 48, at 715.

tests for each as they relate to a stepparent's support duties.¹⁶⁰ In formulating a test for an award of temporary support, the court opined that a stepchild should not have to face "immediate hardship" because his stepparent divorces his natural parent.¹⁶¹ The court wisely realized that a stepchild who has been dependent on a stepparent for maintenance must be afforded a simple test to prove the need for *pendente lite* support.¹⁶² The court therefore refused to require the custodial parent to prove the difficult elements of equitable estoppel in order to receive temporary support.¹⁶³ Instead, the court permitted the custodial parent to prove the need for *pendente lite* support based solely on sworn testimony.¹⁶⁴ A sufficient showing for an award of temporary support would include the custodial parent's affidavit stating that the natural father is not supporting the child *and* that the stepparent actively interfered with the natural father's efforts to support his child.¹⁶⁵ By easing the custodial parent's ability to obtain a *pendente lite* award, the *Miller* decision preserves the stepchild's source of support during the uncertain litigation period and properly serves the best interest of the stepchild.

The permanent support tests set down by the *Miller* court present various problems. For example, the *Miller* majority would treat the post-divorce support duties of a stepparent differently depending upon the custodial parent's knowledge of the natural parent's whereabouts.¹⁶⁶ If the natural father can be located, the *Miller* decision requires the mother to seek child support from him before proceeding against the stepfather.¹⁶⁷ If the natural parent cannot be located, however, the decision allows the mother to seek child support from the stepfather immediately.¹⁶⁸ This distinction created by the *Miller* majority unfairly penalizes the custodial parent who knows the location of the child's natural father,¹⁶⁹ while it provides the stepparent with an additional avenue for escaping support liability. The *Miller* court might have eliminated this unjust result by allowing

¹⁶⁰ See *Miller*, 97 N.J. at 167-69, 478 A.2d at 357-59.

¹⁶¹ *Id.* at 167, 478 A.2d at 358.

¹⁶² See *id.*

¹⁶³ See *id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 169, 478 A.2d at 359.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See *id.* at 177, 478 A.2d at 363 (Handler, J., concurring in part and dissenting in part). Justice Handler stated that "[i]f, at the time of the demise of the second marriage, the natural father is hard to find, or unavailable or uncooperative or unamenable to legal process—if he has to be run down and sued to enforce his legal obligation—this burden constitutes a sufficient detriment." *Id.*

the custodial parent to proceed concurrently in a support action against the natural father and the stepfather.¹⁷⁰

Another problem with the *Miller* decision involves the proofs required once the custodial parent has succeeded in bringing the natural father before the court. In this situation, the *Miller* majority would compel the natural parent to demonstrate why he should not have to support his children.¹⁷¹ The *Miller* decision placed this burden on the natural father even in situations where the stepfather has affirmatively acted to alienate the natural father from his children.¹⁷² The majority therefore allows the stepfather to benefit from what is otherwise self-serving and undesirable conduct.¹⁷³ It is unlikely that the *Miller* court intended to reward a stepfather for consciously interfering with a natural father's relationship with his children. Justice Handler suggested a fairer and more desirable way of dealing with this problem. He would impose upon the stepparent the burden of proving why the natural parent should support his children.¹⁷⁴ This approach would ensure that a stepparent will not escape post-divorce support liability when he has actively estranged his stepchildren from their natural father.

A major shortcoming of the *Miller* decision is that many of the majority's guidelines regarding the support duties of stepparents are unclear.¹⁷⁵ Justice Garibaldi's opinion does not precisely state

¹⁷⁰ Justice Handler noted that both the custodial parent and the stepparent "should be required, or given the opportunity, to assert [the support] obligation against the natural father." *Id.* at 178, 478 A.2d at 363 (Handler, J., concurring in part and dissenting in part).

¹⁷¹ *Id.* at 169, 478 A.2d at 359.

¹⁷² *See id.* The majority emphasized that "the natural parent should always be considered the primary recourse for child support." *Id.*

¹⁷³ *See id.* at 176-78, 478 A.2d at 362-63 (Handler, J., concurring in part and dissenting in part). Justice Handler argued that it is "socially-desirable" to dissuade stepparents from interfering in their stepchildren's relationships with their natural parents. *Id.* at 176, 478 A.2d at 362 (Handler, J., concurring in part and dissenting in part).

¹⁷⁴ *Id.* at 176-77, 478 A.2d at 363 (Handler, J., concurring in part and dissenting in part).

¹⁷⁵ A recent decision by the New Jersey Supreme Court exemplifies the confusion generated by *Miller*. *See M.H.B. v. H.T.B.*, 100 N.J. 567, 498 A.2d 775 (1985) (per curiam). In *M.H.B.*, an equally divided supreme court affirmed an appellate division decision that equitably estopped a stepparent from refusing to support his stepchild. *Id.* at 568, 498 A.2d at 775. The members of the court disagreed in their interpretations of *Miller*. *Compare id.* at 572-73, 498 A.2d at 777-78 (Handler, J., concurring) with *id.* at 582-83, 498 A.2d at 783-84 (Pollock, J., concurring in part and dissenting in part). Justice Handler's opinion focused on the reliance element of equitable estoppel, particularly emotional reliance. *See id.* at 573-77, 498 A.2d at 778-80 (Handler, J., concurring). Justice Pollock, however, in a separate opinion, stressed the stepparent's interference with the natural parent's support duty and

whether the support obligations of stepparents are commensurate with or subordinate to the support obligations of natural parents.¹⁷⁶ The *Miller* decision suggests that a stepfather's support duties are secondary to those of the natural father, even when a stepfather is equitably estopped from denying support for his stepchild.¹⁷⁷ The supreme court also stated that the natural father must demonstrate that he is financially unable to support his children before the stepfather will be ordered to do so.¹⁷⁸ Furthermore, the *Miller* majority went so far as to say that a stepfather who is ordered to pay child support may have a reimbursement claim against the natural father for any such expenses actually incurred.¹⁷⁹ These "guidelines" will only foster litigation and delay a final support decision. The *Miller* opinion encourages continuing support battles between stepparents and natural parents by holding that "changed circumstances" can alter or modify the stepparent's support duties.¹⁸⁰

These vagaries in the *Miller* decision probably reflect the prevailing view of society—that the natural parent is primarily responsible for the support of his child.¹⁸¹ By attempting to follow this view and still provide for the best interest of the child, the *Miller* court afforded trial courts broad discretion and encouraged *ad hoc* review of matters similar to *Miller*.¹⁸² It is regrettable, however, that *Miller's*

the unavailability of the natural parent as the prerequisites to application of the equitable estoppel doctrine. See *id.* at 583-84, 498 A.2d at 784 (Pollock, J., concurring in part and dissenting in part).

Furthermore, Justice Handler believed that the *M.H.B.* facts warranted a conclusive finding of equitable estoppel because of the stepchild's detrimental reliance on the stepparent. *Id.* at 573, 577, 498 A.2d at 778, 780 (Handler, J., concurring). Justice Pollock, however, stated that he "would remand the matter to the Chancery Division for reconsideration" of the natural parent's ability to support his child. *Id.* at 584, 498 A.2d at 784 (Pollock, J., concurring in part and dissenting in part). Thus, the nature of the court's decision in *M.H.B.* demonstrates the difficulty that trial courts will have in applying the principles enunciated in *Miller*. See *infra* notes 176-180 and accompanying text.

¹⁷⁶ See *Miller*, 97 N.J. at 167-70, 478 A.2d at 358-59.

¹⁷⁷ See *id.* at 169, 478 A.2d at 359. The *Miller* majority stated: "We emphasize, however, that the natural parent should always be considered the primary recourse for child support because society and its current laws assume that the natural parent will support his or her child." *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 170, 478 A.2d at 359; see also Note, *supra* note 138, at 587 (setting forth precautions stepparent might take to preserve reimbursement claim against natural parent).

¹⁸⁰ *Miller*, 97 N.J. at 169, 478 A.2d at 359.

¹⁸¹ See *supra* note 44 and accompanying text.

¹⁸² See *Miller*, 97 N.J. at 169, 478 A.2d at 358-59. The *Miller* court observed: "Matrimonial cases are extremely fact-sensitive because each case involves a unique set of interpersonal relationships. The burden of establishing economic detriment depends on the facts of the particular case." *Id.* (emphasis added).

lack of clear guidelines concerning a stepparent's support obligations may act to limit the precedential value of the decision.

In an apparent effort to assuage the stepparent who does not actively interfere in the natural father's relationship with his child, the *Miller* court restrained its holding to those cases in which an arduous equitable estoppel test is proven.¹⁸³ Although this approach is commendable, the proposed test is ambiguous because the majority fails to articulate exactly what is needed to prove an equitable estoppel.¹⁸⁴ The *Miller* decision leaves trial courts with scant guidelines to assist them in determining whether a case's facts support a finding of representation, reliance, and detriment.¹⁸⁵ Once again, the uncertainties present in the *Miller* opinion act to diminish its value as a standard for determining stepparent support liability.

Although the *Miller* decision failed to define conclusively the elements of equitable estoppel, the supreme court did settle some potential disputes. By relaxing the requirement that the stepchild believe the stepparent is his natural parent, the *Miller* decision extended relief to all children and not just to those who were infants when their parents and stepparents married.¹⁸⁶ The supreme court appropriately acknowledged that the interests of all stepchildren must be served. The majority also correctly determined that the "emotional bonding" between stepparent and child will not induce reliance sufficient to uphold an award for support.¹⁸⁷ The court pointed out that loving step relationships might easily be discouraged if stepparents feared permanent support obligations.¹⁸⁸ Perhaps Justice Handler developed the most practical application for "emotional bonding" by designating parental love as a "factor to be

¹⁸³ The *Miller* court only permitted the equitable estoppel test to be used if the stepparent "actively interfered" with the natural parent's support obligations. *Id.* at 169, 478 A.2d at 359. The decision, however, does not define "active interference," and thus creates uncertain precedent for trial courts. *See id.* Stepparent interference will not always be as obvious as Jay Miller's destruction of Ralph Febre's support checks. *See id.* at 160, 478 A.2d at 354.

¹⁸⁴ *See id.* at 167-69, 478 A.2d at 358-59.

¹⁸⁵ *See id.* The *Miller* majority held that *some* representation of support must be made by the stepparent, but it did not state what form this representation might take. *See id.* at 167-68, 478 A.2d at 358. In addition, the *Miller* court failed to articulate what factors might induce reliance by the stepchildren on the stepparent's support. *See id.* at 168, 478 A.2d at 358. Instead, the court discussed a factor that will not induce sufficient reliance—"emotional bonding." *See id.* Furthermore, the *Miller* court left any determination of future financial detriment solely to the discretion of the trial courts. *Id.* at 168-69, 478 A.2d at 358-59.

¹⁸⁶ *See id.* at 167-68, 478 A.2d at 358.

¹⁸⁷ *Id.* at 168, 478 A.2d at 358.

¹⁸⁸ *Id.*

weighed in making the equitable assessment."¹⁸⁹

The fact that stepchildren have traditionally been ignored under most child support laws is regrettable, and the *Miller* court has made a noteworthy effort to reverse this historic injustice. In applying the doctrine of equitable estoppel to this area of domestic relations law, the *Miller* decision evidences a growing judicial concern for the rights of stepchildren. The *Miller* court properly recognized that the support needs of a child continue after his stepparent and natural parent divorce. Unfortunately, in applying the theory of equitable estoppel to the issue of stepparent support, the *Miller* majority does not afford the doctrine its fullest and most favorable application. By emphasizing the detriment to stepchildren as a consideration when applying equitable estoppel,¹⁹⁰ the court refused to make a clean break from the outdated and oppressive common law notions of stepparent support liability. A befitting disclaimer of these common law principles would include an imposition of support liability on any stepfather who alienates a child from his natural father while assuming the support of the child himself. The fact that the number of American stepfamilies is increasing every year¹⁹¹ makes the need for stepparent support liability even more urgent. By giving the doctrine of equitable estoppel its broadest possible application, modern courts will ensure that stepchildren are amply taken care of and that their best interests are appropriately served.

Karlene K. Knaub

¹⁸⁹ *Id.* at 175, 478 A.2d at 362 (Handler, J., concurring in part and dissenting in part).

¹⁹⁰ *Id.* at 168, 170, 478 A.2d at 358, 359.

¹⁹¹ See Mahoney, *supra* note 48, at 38 (citation omitted); Bartlett, *supra* note 48, at 912 (citations omitted).